

**EXHIBIT B**

## Rough Transcript

Page 1

1 CONFIDENTIAL - ROUGH DRAFT

2 UNCERTIFIED TRANSCRIPT DISCLAIMER IN THE MATTER OF: 09:45

3 09:45

4 The following transcript of proceedings, or any portion 09:45

5 thereof, in the above-entitled matter, taken on any 09:45

6 date, is being delivered UNEDITED and UNCERTIFIED by 09:45

7 the official court reporter of the proceedings. 09:45

8 09:45

9 This transcript has not been checked, proofread or 09:45

10 corrected. It is a DRAFT transcript, NOT a certified 09:45

11 transcript. As such, it may contain omissions, 09:45

12 computer-generated mistranslations of stenotype code or 09:45

13 electronic transmission errors, resulting in inaccurate 09:45

14 or nonsensical word combinations, or untranslated 09:45

15 stenotype symbols which cannot be deciphered by 09:45

16 nonstenotypists. In some cases, corrections will be 09:45

17 made in the preparation of the certified transcript, 09:45

18 resulting in differences in content, page and line 09:45

19 numbers, punctuation and formatting. 09:45

20 THE VIDEOGRAPHER: Good morning, Ladies 09:45

21 and Gentlemen. This is the begin of of tape 09:46

22 number 1 in the video deposition of Frank M. 09:46

23 Ferraro, MD, it's December 22nd, 2011. It's 09:46

24 9:46 a.m. The case is James Zimmerman, Marv 09:46

25 Pinzon and William G. Vazquez, plaintiff, 09:46

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1  
2 Q (BY MR. SPALTEN) Please take a look at 10:45  
3 Ferraro 2. 10:45  
4 Okay. Have you ever seen this document 10:45  
5 before? 10:45  
6 A My signature is on it, so I must have. 10:45  
7 Q Do you -- 10:45  
8 A I don't recall it. 10:45  
9 Q You -- you don't recall this document, 10:45  
10 though? 10:45  
11 A No. 10:45  
12 Q Okay. 10:46  
13 A My signature is on it, though. That is my 10:46  
14 signature. 10:46  
15 Q Okay. Tell me which page your signature 10:46  
16 appears on this document. 10:46  
17 A 30217. 10:46  
18 Q It appears on a subscription agreement, 10:46  
19 correct? 10:46  
20 A That's what it says at the top. 10:46  
21 Q And is -- is that subscription agreement 10:46  
22 dated? 10:46  
23 A No, sir. 10:46  
24 Q Okay. Do you know when you signed this? 10:46  
25 A No, sir. 10:46

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1			
2	Q	Take a look at Bates number 003021.	10:46
3	A	00302 --	10:46
4	Q	11.	10:47
5	A	11.	10:47
6	Q	Your signature appears there, correct?	10:47
7	A	Correct.	10:47
8	Q	And is this document dated?	10:47
9	A	No, sir.	10:47
10	Q	Okay. Do you know whether it -- first of	10:47
11		all, do you know whether you signed this document?	10:47
12	A	That's my signature.	10:47
13	Q	Do you have a specific recollection of having	10:47
14		signed this document?	10:47
15	A	No, sir.	10:47
16	Q	Do you know when you signed it?	10:47
17	A	No, sir.	10:47
18	Q	Do you recall any correspondence between	10:47
19		anyone at Quantum medical radiology and Mr. Youra, not	10:47
20		regarding the substance of this agreement, but	10:47
21		transmitting copies of this agreement prior to its --	10:48
22		your signing it?	10:48
23	A	No, sir.	10:48
24	Q	Do you recall any written communication about	10:48
25		a U.S. teleradiology, LLC operating agreement between	10:48

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any of the existing or future partners in the company  
of -- at any time?

A We tried to make multiple attempts to expand  
U.S. teleradiology's structure to include new people.  
So there were many --

Q Well, I'm talking about this one now to be  
clear?

A This one?

Q In the 2002 time frame. And I simply  
mentioned the 2002 time frame because that's what  
appears on Bates 0030217. And other pages of this  
document.

A I don't recall at this time.

Q Okay. So you don't know if there are any  
written communications leading up to or otherwise  
referring to this document in the 2002 time frame?

A Nine years ago, I do not recall.

MR. MARSHALL: Off the record just for a  
second.

THE VIDEOGRAPHER: 10:49. We're off the  
record.

(Whereupon, there was a discussion off the record.)

\*\*AUDIO OFF.

THE VIDEOGRAPHER: 10:50. We're back on the

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1  
2 2004, doesn't it? 11:25  
3 A Right. 11:25  
4 Q Okay. 11:25  
5 A I'm confused. 11:25  
6 Q Okay. So -- you just don't know where this 11:25  
7 document came from? 11:25  
8 A Correct. 11:25  
9 Q Okay. 11:25  
10 A I have no idea. 11:25  
11 Q What does the Bates stamp on the lower right 11:25  
12 of the front page of that document read? 11:25  
13 A What's a date stamp? 11:26  
14 Q Bait. Do you know what a Bates stamp is? 11:26  
15 A No. 11:26  
16 Q It's a -- it's a number that is placed on a 11:26  
17 document in discovery proceedings in litigation like 11:26  
18 this, and it designates the party producing it as well 11:26  
19 as the sequence of the document in the production. 11:26  
20 What -- what is that Bates stamp? 11:26  
21 A QMR 000233. 11:26  
22 Q Okay. All right. Take a look now at number 11:26  
23 5. 11:26  
24 A Yes, sir. 11:26  
25 Q Have you ever seen this document before? 11:26

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1  
2 A I believe I have seen this document before. 11:26  
3 Q Okay. What is it? 11:26  
4 A U.S. tele radiology LLC operating agreement 11:27  
5 dated as of January 2nd, 2004. 11:27  
6 Q When was the last time you saw this document? 11:27  
7 A Probably in 2004. 11:27  
8 Q Did you review this document in preparation 11:27  
9 for this deposition? 11:27  
10 A I don't recall reviewing it document. 11:27  
11 Q Has anyone ever shown you this document in 11:27  
12 connection with this litigation? 11:27  
13 A I don't recall. I don't -- 11:27  
14 Q Does that mean you don't think they did or 11:27  
15 you -- you're just not sure? 11:27  
16 A I don't recall. I -- I don't know. Now I'm 11:27  
17 very confused. I'm sorry. 11:27  
18 Q All right. Do you remember discussions among 11:27  
19 board members of QMR regarding the preparation of an 11:27  
20 operating agreement of U.S. teleradiology in early 11:27  
21 2004? 11:28  
22 A There were many discussions about operating 11:28  
23 agreements for U.S. teleradiology. We were trying to 11:28  
24 figure out a away to form the company that would be a 11:28  
25 template for the company to grow with. And there were 11:28

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1 very few teleradiology companies that were physician 11:28  
2 owned. I don't know there were any back then. There 11:28  
3 were no teleradiology companies that did not have 11:28  
4 outside capital in them, like I mentioned Shear Ahern 11:28  
5 was really owned by MedPartners. Nighthawk was 11:28  
6 financed by summit partners, a hedge fund, and so we 11:28  
7 were trying to figure out a process. 11:28

9 Q Was that as to the 2002 operating agreement 11:28  
10 that that was previously shown to you? 11:29

11 A What was true? 11:29

12 Q Were there discussions of the nature you just 11:29  
13 described regarding the 2002 operating agreement you 11:29  
14 testified to? 11:29

15 A I don't recall discussions, but somehow it 11:29  
16 had to be produced, so I'm sure there were discussions. 11:29

17 Q Okay. How about as to the Exhibit 5; do you 11:29  
18 recall discussions about Exhibit 5 in -- 11:29

19 A There were discussions. 11:29

20 Q -- in late 2003 or early 2004? 11:29

21 A There were discussions about how to make this 11:29  
22 work for years. 11:29

23 Q Okay. Do -- was -- was there any email or 11:29  
24 other written correspondence prior to the creation of 11:29  
25 Exhibit 5, the document that is Exhibit 5, between the 11:30



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board members of QMR?

11:30

A I don't recall emails. A lot of this stuff,

11:30

you have to realize, I don't know how to type. I hunt

11:30

and peck, okay? Dr. McAllister is very computer

11:30

phobic, as a matter of fact when we started he had

11:30

other people touch the mouse and Dr. Roche is in

11:30

his '60s so we really discuss things a lot on the

11:30

phone. There wasn't a lot of emails going back and

11:30

forth. I probably was the most prolific email writer

11:30

and I know you have access to all my emails, they were

11:30

provided unfettered access to all our accounts, you can

11:30

see that, you know, I type R for -- R is the letter for

11:30

are, U is the letter for YOU I mean I'm a hunt and peck

11:30

are so we really weren't -- it's not conducive when you

11:31

only have a few people it's much easier to just put

11:31

people on the phone with each other.

11:31

Q Okay. Well in 2003 we've seen a letter from

11:31

Dr. Zimmerman relating to his buy-in to QMR and here

11:31

dated January 2nd, 2004, we have Exhibit 5, which is an

11:31

operating agreement of U.S. teleradiology, LLC,

11:31

correct?

11:31

A 2003, 2004, yes, sir.

11:31

Q Okay. And --

11:31

A Sorry.

11:31

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1  
2 Q Who are the listed members of U.S. 11:31  
3 teleradiology, LLC, as of January 2nd, 2004, according 11:31  
4 to Exhibit 5? 11:31  
5 A Who are the listed members? Is there a 11:32  
6 particular spot where it's listed? 11:32  
7 Q Take a look on page 28, which is Bates 11:32  
8 labeled QMR 0030189. 11:32  
9 A 189. Undersigned have executed this 11:32  
10 agreement as of the date set -- first set forth above. 11:32  
11 The people who have signed this document are myself, 11:32  
12 Dr. Roche, and Dr. McAllister. 11:32  
13 Q Okay. And who else are listed as members? 11:32  
14 A Dr. -- 11:32  
15 MR. PERLOWSKI: Object to the form of 11:32  
16 the question. 11:32  
17 THE WITNESS: There's two other names on 11:32  
18 the piece of paper. 11:32  
19 Q (BY MR. SPALTEN) Under members? 11:32  
20 A Under members there are two other names. 11:32  
21 Q And what -- 11:32  
22 A Dr. James Zimmerman and Dr. Marv Pinzon are 11:32  
23 typed out but there's no signature for either one. 11:32  
24 Q Okay. And on Exhibit A, which is the next 11:32  
25 page, the following page, page 29, Bates'd 0030190, 11:32

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what are the capital contributions, units issued and  
names listed on there?

A There is no -- there are five names listed,  
capital contributions are blank, units issued are  
blanks, it discusses class of shares, and discusses  
total units issued but doesn't have a total. It just  
says 1 million, 1 million, 1 million, 1 million, 1  
million.

Q Okay. Now, do you recall any correspondence  
amongst any board members of U.S. teleradiology and  
either Dr. Zimmerman or Dr. Pinzon regarding  
Dr. Zimmerman or Dr. Pinzon's membership in UST in  
connection with the creation of this document?

A Do I recall correspondence between  
Dr. Zimmerman and Dr. Pinzon with the other members in  
creation of this document?

Q And in -- in particular, with regard to  
Dr. Zimmerman and Dr. Pinzon's membership in UST?

A Membership in UST. I believe there were  
multiple emails that Dr. Zimmerman may have sent -- I  
don't -- do I remember any in particular? No. I  
believe that there was some correspondence, but I don't  
remember any particular email that sticks -- you know,  
I -- I think there was some conversation I believe that

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times to figure out a way that we could come together 11:39

to make this work. 11:39

Q Okay. So did you? 11:40

MR. PERLOWSKI: Let me -- I just want to 11:40

want to say for the purposes of clarifying 11:40

the record that when Dr. Ferraro was 11:40

referring to a document in his answer, he was 11:40

referring to Exhibit 3. 11:40

MR. SPALTEN: Thank you {CHECK THIS}. 11:40

Q (BY MR. SPALTEN) Why were doctors Zimmerman 11:40

and Dr. Pinzon listed on page 28 of Exhibit 5? 11:40

A I will speculate -- 11:40

Q Well, first, let me ask, do you know? 11:40

A I didn't write the document so I -- 11:40

Q Well you -- you were a member of the board of 11:41

US teleradiology at that point, weren't you? 11:41

A Yes, sir. 11:41

Q And who communicated with counsel -- well, 11:41

first of all, do you know who wrote this? 11:41

A It's either -- I can give you two people it's 11:41

either one other the other or three I'm sorry it's Ben 11:41

Barkley at Kilpatrick or Michael golden of Arnall 11:41

Golden Gregory so it's one of those three {CHECK THIS}. 11:41

Q Okay. Now, did you have the relationship 11:41

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with Kilpatrick?

11:41

A I knew Ben Barkley but I also brought my partners in to the relationship. They met with Ben Barkley several times. He was, I think, the vice chairman of Kilpatrick. Is it kill Pratt particular Stockton now or was it Kasowitz, Benson, Torres & Friedman code de and Kilpatrick. Easy involved it's evolved over time.

11:41

11:41

11:41

11:41

11:41

11:41

11:41

Q Would recognize the reference?

11:41

A Okay.

11:41

Q I think I can speak for opposing counsel in --

11:41

11:42

MR. PERLOWSKI: Absolutely.

11:42

MR. SPALTEN: Putting it that way.

11:42

Q (BY MR. SPALTEN) Who has been the transactional counsel for U.S. teleradiology LLC?

11:42

11:42

A I think Michael -- I don't know what transactional counsel I'm sorry I'm answering the question and I don't know what the word is.

11:42

11:42

11:42

Q The business lawyer who drafts contracts generally?

11:42

11:42

MR. PERLOWSKI: Object to format what point in time?

11:42

11:42

MR. SPALTEN: Well, from its inception

11:42

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1 forward. 11:42

2 MR. PERLOWSKI: Okay. 11:42

3 THE WITNESS: I believe it's evolved. 11:42

4 Q (BY MR. SPALTEN) Okay. 11:42

5 A I think it was Greg Youra yeah it had to be 11:42

6 Greg Youra because he did this (indicating). 11:42

7 Q And you're -- 11:42

8 A I'm sorry, Exhibit number 1. Exhibit -- so 11:42

9 he did Exhibit number 1. 11:42

10 Q Okay. 11:42

11 A So that was Greg Youra. Could have possibly 11:42

12 went to Kilpatrick Stockton, I don't know if it did. I 11:42

13 know that it's now Michael Golden at Arnall Golden 11:42

14 Gregory. 11:43

15 Q And when did Mr. Golden take over that role? 11:43

16 A Again, you have a piece of paper that says 11:43

17 2004 in front of you. I'm thinking that it could have 11:43

18 been about that time. 11:43

19 Q And who was it prior to that time? 11:43

20 A It was either Ben Barkley or Greg Youra. I'm 11:43

21 not sure. 11:43

22 Q Now, I'm looking at page 28 of Exhibit 5 11:43

23 again, and it is signed under the name company on the 11:43

24 left side, and it appears US tele owe -- it looks like 11:43

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there's a typo there \*\*[\*\*CK|DOCT\*\*] but it's signed by 11:43

you, correct? 11:43

A Correct. That's -- 11:43

Q And that's your signature? 11:43

A That's my name. Approximation. 11:43

Q So this document was a document authorized to 11:43  
be prepared on behalf of U.S. teleradiology, correct? 11:44

A Correct. 11:44

MR. PERLOWSKI: Object -- go ahead. Go 11:44  
ahead. That's fine. 11:44

Q (BY MR. SPALTEN) And to your knowledge, U.S. 11:44  
teleradiology's counsel prepared it, correct? 11:44

A Correct. 11:44

Q Now, do you know why -- and I'm not asking 11:44  
you here for any communications with counsel, okay -- 11:44  
do you know why counsel included James Zimmerman and 11:44  
Marv Pinzon's names on page 28, that is Bates 30189? 11:44

A Our -- 11:44

MR. PERLOWSKI: Just he's not asking you 11:44  
to reveal any privileged communications, so I 11:44  
guess the -- if you can answer the question 11:44  
without revealing a privileged communication, 11:44  
please do so. But if you cannot, don't do 11:44  
so. Do you understand what I'm. 11:44

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THE WITNESS: I don't know what a  
privileged communication is.

MR. PERLOWSKI: A privileged  
communication would be a communication  
between attorneys and client. So if to  
answer the question you would have to reveal  
a communication between legal counsel UST and  
yourself you're not to do that.

THE WITNESS: I'm not to do that.

Q (BY MR. SPALTEN) I'm sorry?

A Because I -- I had the discussion with the  
lawyer, I guess to do this.

Q All right. Well, let me ask you, independent  
of the discussion with the lawyer, what is your  
understanding of any discussion between US  
teleradiology and Jim Zimmerman and Marv Pinzon that  
led to their names appearing on this document?

MR. PERLOWSKI: Can you read the  
question back, please.

So, I don't mean to interfere but David,  
please, given the witness appears to be confused. That  
question does not call for a privileged communication.  
The question that David asked is are you aware of  
conversations between US teleradiology and either



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1  
2 Dr. Zimmerman or Pinzon that resulted or that may have 11:46  
3 led to their names being listed on page 28 of Exhibit 11:46  
4 5. 11:46

5 THE WITNESS: Why are their names 11:46  
6 here. 11:46

7 THE COURT REPORTER: Pardon me say that 11:46  
8 again. 11:46

9 THE WITNESS: Why there are names here? 11:46

10 Q I'm trying to be a little more precise? 11:46

11 A I'm sorry. 11:47

12 Q First I'm limiting what communications were 11:47  
13 there that led to their names appearing here? 11:47

14 A I don't know if there was any communications. 11:47  
15 I mean, I don't -- I don't -- 11:47

16 Q Well, why then -- 11:47

17 A Let. Why then is it there. 11:47

18 Q Yes? 11:47

19 A Because it was everyone's goal and intention 11:47  
20 to make the system work and to figure a process 11:47  
21 {CHECK THIS} whereby we could add new members to the 11:47  
22 organization that was agreeable to the original 11:47  
23 partners and to new partners coming on. We could never 11:47  
24 get to that point. There was a -- my perception was 11:47  
25 the bargaining position of the new people was this is 11:47

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1  
2 worth nothing, we should pay nothing for it, it is only 11:47  
3 computers and wires, there is no value to it, and we 11:47  
4 should be made completely equal with no buy in or 11:47  
5 extremely limited buy in. The position of myself 11:47  
6 was -- there was a lot of work, there was a lot of 11:47  
7 spade work that went into this, there was a lot of 11:48  
8 digging, there was a lot of hours somehow we have to 11:48  
9 figure out a way to make it fair to the founders and 11:48  
10 bring in new people. 11:48

11 Q All right, well doctor Ferraro? 11:48

12 A So I -- 11:48

13 Q I absolutely am doing everything I can to in 11:48  
14 no way stop you from testifying and I don't intend to 11:48  
15 do that. My question really is related to this 11:48  
16 document right now, okay? And how it was that their 11:48  
17 names ended up on here. 11:48

18 A Because it was -- 11:48

19 Q -- 11:48

20 A The goal to get them to sign this document 11:48  
21 and become partners. 11:48

22 Q So there were discussions with them about a 11:48  
23 document like this, is that true? 11:48

24 A There were many -- yeah, discussion about 11:48  
25 many documents. 11:48

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1

2

Q Okay.

11:48

3

A Many different ways.

11:48

4

Q All right. Tell me about what the

11:48

5

discussions were about those gentlemen, Dr. Pinzon and

11:48

6

Dr. Zimmerman's prospective membership in UST prior to

11:49

7

January 2nd, 2004.

11:49

8

A There was UST which was an organization that

11:49

9

provided telemedicine services. We contracted with QMR

11:49

10

to provide the doctors. QMR provided the doctors. We

11:49

11

wanted -- it was always my intention that one of the

11:49

12

problems with healthcare is that doctors weren't

11:49

13

involved enough.

11:49

14

Q (BY MR. SPALTEN) Dr. Ferraro?

11:49

15

A I'm sorry.

11:49

16

MR. PERLOWSKI: Dr. Ferraro this -- let

11:49

17

me.

11:49

18

THE WITNESS: I'm sorry.

11:49

19

MR. PERLOWSKI: He's asking about

11:49

20

specific discussions in response -- his

11:50

21

question was about specific discussions prior

11:50

22

to January 2nd of 2004. If I recall the

11:50

23

question correctly.

11:50

24

Q (BY MR. SPALTEN) Yeah, and Dr. Ferraro, let

11:50

25

me -- let me ask you to first address the first

11:50

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discussions, and now I'm not talking about your  
underlying thought processes?

A Okay. 11:50

Q Okay? I am now asking about what was said in 11:50  
the first discussions you are aware of, okay, regarding 11:50  
Dr. Pinzon and Dr. Zimmerman's membership in UST. 11:50  
Let -- let me help orient you. When did the first 11:50  
discussions that you can recall take place? 11:50

A I can't. It's just -- it's a big blur. It 11:50  
just seems like discussions were always going back and 11:50  
forth. We were busy taking care of patients, and I -- 11:50

Q So you -- you cannot recall what those 11:51  
discussions were? 11:51

A Yeah, I just -- just like little tidbits here 11:51  
and there but I don't even know -- I don't have a 11:51  
diary, I don't have dates, why have any of that, no. 11:51

Q That wasn't what I was asking you. I'm 11:51  
asking about recollection, whether you recall -- do you 11:51  
recall any particular discussions with Dr. Pinzon or 11:51  
Dr. Zimmerman about their understanding or expectations 11:51  
as to the terms in which they would become members of 11:51  
UST? 11:51

A I -- I don't want to upset anyone. 11:51

Q You're not going to upset anybody? 11:51

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2 A Okay, I don't want to -- 11:51

3 Q We all do this for a living all the time and 11:51

4 this is use our professional activity? 11:51

5 A So I don't want -- 11:51

6 Q So don't worry about that? 11:51

7 A What I really remember struck me was that 11:51

8 they said there's no value there, there should be no 11:51

9 buy-in and we should all be equal in ownership. 11:51

10 Q When do you recall that conversation taking 11:52

11 place? 11:52

12 A That -- that theme was the underlying theme 11:52

13 throughout everything. 11:52

14 Q Do you recall a specific conversation in 11:52

15 which they said one or the other of them said that, and 11:52

16 if so, when did it occur? 11:52

17 A It was -- I remember the conversation that 11:52

18 I'm -- that I'm referencing was at the OPS building, 11:52

19 which was in Cumberland Mall area, in -- after a 11:52

20 meeting, myself walking out with Dr. Zimmerman and him 11:52

21 saying there's no value there, it's just some computers 11:52

22 and some -- some wires, and that's all it is. And it 11:52

23 struck me as so crazy that that's what he thought about 11:52

24 this, and also it seemed incongruous with the desire to 11:52

25 have totally equal partnership in something that's 11:53

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worth nothing.

Q Okay. I'm --

A That's the --

Q With all -- with all respect, I'm object to that -- that answer as being nonresponsive and move to strike it. Now --

MR. PERLOWSKI: I think -- I think that answer was responsive certainly at least the initial portions of it were responsive to the question he was referring to a specific conversation at a specific location.

Q (BY MR. SPALTEN) Okay. When did that occur?

A I -- I don't know a date. It was dark outside. That's all I know. I mean, honestly, I -- I just remember it being dark. I know exactly where the court yard it it's -- it's just like one of those things that you remember in high school. It's just there in your head.

Q So you don't recall the year, then?

A No, I do not recall the year.

(NOTE: Neurostar solutions, Inc., cap chart 2/1/05.  
Exhibit 6

Q (BY MR. SPALTEN) Please take a look at Exhibit number 6.